

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 24 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOSEPH A. III,)	2 CA-JV 2011-0074
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, JOSEPH A. IV, ANASELI A.,)	
and JAZMINE A.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19222000

Honorable Kathleen A. Quigley, Judge Pro Tempore

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Claudia Acosta Collins

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Appellant Joseph A. III challenges the juvenile court’s order terminating his parental rights to his three children, Joseph A. IV, Anaseli A., and Jazmine A., on the ground that he was unable to remedy the circumstances causing the children to remain in a court-ordered, out-of-home placement for at least fifteen months and “there [wa]s a substantial likelihood” he would “not be capable of exercising proper and effective parental care and control . . . in the near future.” *See* A.R.S. § 8-533(B)(8)(c). He argues the court erred in finding that statutory ground for severance had been proven and in finding that terminating his parental rights was in the children’s best interests, and he essentially requests that we reweigh the evidence presented to the juvenile court. We decline to do so and, finding reasonable evidence to support the court’s decision, affirm.

¶2 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent’s rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the court’s order. *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). And, because the resolution of “conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact,” we will not reweigh the evidence. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶3 In 2009, Joseph was living with his three children, their mother Felicia L., and Felicia's daughter Kassandra. In September, Kassandra "arrived at school with numerous bruises to her face and body" that she reported Joseph had caused when he "had grabbed her 'whole face' with his hand and yanked her by [her] hair with his other hand because he became angry due to [her] playing with her mother's make-up." She also stated she was afraid to go home. She subsequently reported that Joseph had hit her with a closed fist, and that she had been kept home from school the day before because of the bruises on her face. Kassandra was placed with her maternal grandmother, but Joseph's three children were allowed to stay with Felicia on "a safety plan stating that mom was not to allow any contact [between]. . . dad [and] . . . the children." Later that month, Child Protective Services (CPS) received a report that Felicia was allowing Joseph contact with the children, and the CPS investigator found Joseph was living in the home. The children then were removed from their parents' custody. Joseph ultimately pled guilty to child abuse in relation to Kassandra's injuries.

¶4 The Arizona Department of Economic Security (ADES) initially instituted a case plan of family reunification, and Joseph engaged in various services, including therapy to address domestic violence, couples' issues, anger management, and parenting issues, as well as parenting instruction. In July 2010, Joseph's children were returned to Felicia's care but, although he was allowed supervised visitation with the children, he was not allowed in the home due to his "lack of treatment progress." Then, in October 2010, Joseph reportedly fired a gun at a car in which Felicia was a passenger after having a fight with her in a nightclub. Felicia also reported that Joseph "ha[d] made threats towards her by phone, as well as at her home." Joseph was arrested and charged with six

felony counts arising from the shooting incident and was placed in the Pima County jail. Thereafter, ADES filed a motion for termination of his parental rights.

¶5 At the contested severance hearing, the family's CPS case manager stated Joseph had stopped engaging in services in September 2010, even before his arrest. And, although Joseph testified he had participated in services while in jail, the case manager testified she had not received any documentation of such participation. Additionally, although Joseph's therapist testified he had benefitted from services thus far, she also stated that, in light of his arrest, he would need "a minimum of a year" of additional therapy.

¶6 In his testimony at the hearing, Joseph denied he had injured Kassandra and stated he had pled guilty to the crime "[b]ecause there was no other way of getting out of it." And, although he acknowledged having engaged in domestic violence with Felicia, he stated he did not think it was "an issue." He further testified he believed CPS was in his life "[t]o be a pain."

¶7 In addressing the best interests of the children, the CPS case manager testified severance would "provide them a greater sense of security and safety, it would give stronger recourse for the mother in the event the father would come around and it would give them greater emotional stability." She also cited "[t]he continuation of violence that [the children had] witnessed over their lives, the effects that that has on them emotionally and even potentially developmentally."

¶8 In granting the motion to terminate Joseph's parental rights, the juvenile court prepared a thorough minute entry setting out its factual findings based on the above testimony, as well as its legal conclusions. We have determined the record contains reasonable evidence to support the court's factual findings with respect to the statutory

ground for termination and the children's best interests. *See Denise R.*, 221 Ariz. 92, ¶ 4, 210 P.3d at 1264-65 (factual findings upheld if supported by reasonable evidence). The court's factual findings, in turn, support its legal conclusion that severing Joseph's rights was warranted under § 8-533(B)(8)(c). And, as noted above, we will not reweigh the evidence presented to the trial court. *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207-08. We therefore adopt the court's findings of fact and approve its conclusions of law. *See id.* ¶ 16, quoting *State v. Whipple*, 177 Ariz. 272, 274, 896 P.2d 1358, 1360 (App. 1993). Accordingly, we affirm the juvenile court's order terminating Joseph's parental rights.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge